

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAFAEL SALAS,

Plaintiff,

v.

K. ALLISON, et al.,

Defendants.

Case Number 1:21-cv-00669-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
APPLICATION TO PROCEED IN FORMA
PAUPERS BE DENIED

(ECF No. 2)

OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE DAYS

ORDER DIRECTING CLERK TO ASSIGN
DISTRICT JUDGE

Rafael Salas ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Plaintiff filed the complaint commencing this action on April 16, 2021. (ECF No. 1). On that same day, Plaintiff filed an application to proceed in forma pauperis. (ECF No. 2).

The Court will recommend that Plaintiff's application be denied. As Plaintiff had \$3,347.07 in his prison trust account at the time he filed this action (ECF No. 8, p. 1), it appears that Plaintiff can afford to pay the filing fee for this action.

Additionally, given that Plaintiff's account balance has been over \$3,300 for the entirety of the last six months (*id.*), it appears that Plaintiff would be required to pay the filing fee in full immediately even if the Court granted Plaintiff's application. 28 U.S.C. § 1915(b)(1)

1 (“Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma
2 pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall
3 assess and, when funds exist, collect, as a partial payment of any court fees required by law, an
4 initial partial filing fee of 20 percent of the greater of-- (A) the average monthly deposits to the
5 prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-
6 month period immediately preceding the filing of the complaint or notice of appeal.”).

7 Therefore, the Court will recommend that Plaintiff’s application to proceed in forma
8 pauperis will be denied and that Plaintiff be required to pay the filing fee of \$402.00 for this
9 action in full.

10 Based on the foregoing, the Court HEREBY RECOMMENDS that:

- 11 1. Plaintiff’s application to proceed in forma pauperis be DENIED; and
12 2. Plaintiff be directed to pay the \$402.00 filing fee in full if he wants to proceed
13 with this action.

14 These findings and recommendations will be submitted to the United States district
15 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
16 twenty-one (21) days after being served with these findings and recommendations, Plaintiff
17 may file written objections with the Court. The document should be captioned “Objections to
18 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
19 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
20 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
21 (9th Cir. 1991)).

22 Additionally, IT IS ORDERED that the Clerk of Court is directed to assign a district
23 judge to this case.
24 IT IS SO ORDERED.

25 Dated: April 26, 2021

26 /s/ Eric P. Gray
27 UNITED STATES MAGISTRATE JUDGE
28